BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") Further Notice of Proposed Rulemaking (FNPRM) released in the above docketed case on March 3, 2005. In its FNPRM, the Commission states that the record in this proceeding shows that the basic principles underlying existing intercarrier compensation (ICC) regimes must be reexamined in light of significant market developments since the adoption of the access charge and reciprocal compensation rules. Having concluded that there is an urgent need to reform the existing ICC rules, in this FNPRM, the Commission turns to the question of what reforms best serve the identified goals of economic efficiency and investment, development of competition, preservation of universal service, and competitive and technology neutrality. The MoPSC reviewed the various proposals and principles and submits comments with these common goals in mind.

Executive Summary

The majority of the MoPSC supports a unified intercarrier compensation regime that is based on forward-looking economic costs. The United States Court of Appeals, when reviewing the Commission's directive in the *First Report and Order,* found:

> [F]orward-looking costs have been recognized as promoting a competitive environment which is one of the stated purposes of the Act. The Seventh Circuit, for example, explained, "[I]t is current and anticipated cost, rather than historical cost that is relevant to business decisions to enter markets…historical costs associated with the plant already in place are essentially irrelevant to this decision since those costs are 'sunk' and unavoidable and are unaffected by the new production decision." MCI Communications v. American Tel. & Tel. Co., 708 F.2d 1081, 1116-17 (7th Cir. 1983), cert. denied, 464 U.S. 891 (1983). Here, the FCC's use of a forward looking cost methodology was reasonable. The FCC sought comments on the use of forward-looking costs and concluded that forward-looking costs would best ensure efficient investment decisions and competitive entry. See First Report and Order ¶ 705[1]

Further, in its NPRM on TELRIC, the Commission stated:

> Forward-Looking Cost. **A forward-looking costing methodology considers what it would cost today to build and operate an efficient network** (or to expand an existing network) that can provide the same services as the incumbent's existing network. The benefit of a forward-looking approach is that it gives potential competitors efficient price signals in deciding whether to invest in their own facilities or to lease the incumbent's facilities. That is, if construction of new facilities by a competitive LEC would cost less than leasing facilities at prices based on FLEC, the efficient result is for the new entrant to build its own facilities. Assuming that the modeling method is accurate, **a forward-looking cost approach more closely approximates the costs that would exist in a competitive market than does an historical cost approach by revealing potential**

[1] Iowa Utils. Bd., et al. v. FCC, 219 F.3d 744 (8th Cir. 2000).

> **efficiencies that might not otherwise be apparent.** (footnotes omitted, emphasis added.)[2]

The compensation mechanism should be the same for all traffic, whether interstate or intrastate in nature, and should be technologically and competitively neutral. The majority of the MoPSC generally supports the National Association of Regulatory Utility Commissioners (NARUC) proposal as it represents a strong effort at reaching consensus among the industry and includes key components of several proposals, including but not limited to those by the Intercarrier Compensation Forum (ICF), the Expanded Portland Group (EPG) and the Alliance for Rational Intercarrier Compensation (ARIC). The MoPSC has monitored the NARUC Task Force workshops and conferences and understands the proposal is a work in progress in a continuing effort to develop a product that addresses the concerns of all involved in and affected by the Commission's ultimate decision.[3]

The majority of the MoPSC supports a regime in which the states and the Commission work closely in accomplishing the goals of unified compensation and recommends the Commission establish the framework for states to apply to intrastate traffic. Since there are instances where current interstate and intrastate access rates are greatly disparate, the majority of

---

[2] *Notice of Proposed Rulemaking*, In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173. September 10, 2003.

[3] The MoPSC recognizes that an updated version of the NARUC proposal was filed on May 18, 2005. Due to MoPSC review and approval deadlines, these comments are based on previously filed versions. However, the general comments, concerns and recommendations continue to be applicable to the most recently filed NARUC proposal.

the MoPSC recommends the Commission explore whether it is reasonable for state commissions to maintain the ability to review individual carrier circumstances and establish additional transition or compensation mechanisms as necessary to minimize rate shock to consumers in rural, high cost areas without compromising the ultimate goal of creating a sustainable unified rate.

Specifically, the majority of the MoPSC supports NARUC's terminating minute of use proposal that ties the compensation rate to the number of access lines of the incumbent. The MoPSC suggests the Commission establish a proceeding to examine the viability of moving from minutes of use compensation to capacity-based compensation. The majority of the MoPSC also supports the NARUC proposal for cost recovery, including the Rural Access Charge Transition Fund and increases in the subscriber line charge (SLC) for non-rural carriers. The MoPSC notes that an immediate increase in the SLC to $3 may not be feasible and suggests a transition period be implemented to avoid rate shock. The majority of the MoPSC generally supports the idea of transferring distributions from the federal universal service fund to the state commissions under the guidance of the Commission. Finally, the majority of the MoPSC supports the ICF "edge" concept for identifying the point of interconnection for terminating traffic and supports the ICF proposal for transit and transport.

I. Goals of Intercarrier Compensation Reform

The Commission, at paragraph 32, seeks comment on universal service related issues, including the need to maintain reasonable and affordable end-user rates and the avoidance of rate shock. The MoPSC suggests it is important for any unified compensation scheme to maintain the goals of universal service as set forth in the Telecommunications Act of 1996. Proponents of some of the proposals argue that subscribers in low cost areas should pay a reasonable share of the costs for facilities in high cost areas. Others argue that some current rates may not be affordable or reasonable. Others suggest increases in the SLC or universal service fund (USF) mechanisms are the appropriate means to ensure carriers receive fair compensation for the use of their networks. The MoPSC supports a proposal that promotes reasonable end-user rates and avoids rate shock. For this reason, it may be appropriate to establish a national average for basic local rates, with a floor and ceiling to minimize any impact to the end-user. It should also be noted, however, that any national average benchmark rate should include all end-user charges related to basic local service (whether an increase in the SLC, the USF surcharge or some new mechanism). Ultimately, it is the end-user that bears the burden of paying for such subsidies. Finally, the MoPSC supports a proposal that avoids any rate increases to Lifeline customers.

II. Legal Issues

Given the extensive negotiations that formed the basis for some of these proposals, the Commission, at paragraph 62, seeks comment on whether it is preferable to adopt a single proposal in its entirety, modify any particular proposal or attempt to combine different components from individual plans. The MoPSC has reviewed the various proposals filed within this docket. While some of the proposals are extremely comprehensive, others simply provide a framework for further consideration or further Commission rulemaking proceedings. The MoPSC suggests the Commission decide which plan is the appropriate intercarrier compensation plan. The MoPSC further suggests that once the Commission selects a plan, it should conduct another proceeding to establish the framework associated with that plan and to seek further comment as to the impact of that plan on each state, its end users and its carriers. This will allow the plan to be modified, if necessary. The Commission may prefer implementing a proposal that is different from proposals put forward by the various parties, and likely, a compilation of components from multiple plans. Many of the proposals address only the concerns of a certain segment of the industry. This is evident by the many "spin-off" industry working groups that ultimately filed proposals in the docket. Working toward a goal of compromise and unanimity, the majority of the MoPSC supports the NARUC Task Force Intercarrier Compensation Proposal. The NARUC Task Force has made significant strides in putting together a plan that incorporates key concepts from various proposals.

A. Section 252(d)(2) "Additional Cost" Standard

In its *Local Competition First Report and Order*[4] the Commission interpreted the "additional cost" standard of Section 252(d)(2) to permit the use of the TELRIC cost standard that was established for interconnection and unbundled elements. In paragraph 64 of the FNPRM, the Commission solicits comment on whether the TELRIC standard is, or could be, satisfied by the various reform proposals. The Commission also solicits comment on a number of alternatives for modifying or replacing the current cost standard, the applicability of traffic sensitive rates, the applicability of connections-based rates and the applicability to various technologies and traffic.

After reviewing the proposals, the MoPSC makes the following observations: (1) The Cost-Based Intercarrier Compensation Coalition (CBICC) proposal utilizes TELRIC for switching and termination rates; (2) The Home Telephone Company and PBT Telecom (Home) plan promotes the same connections-based charges for all carriers, so TELRIC is not applicable; (3) The ICF proposal takes a different approach than the additional cost standard by outlining a uniform bill-and-keep compensation rule; (4) ARIC promotes an embedded cost structure; and (5) NARUC supports rates that are based on forward-looking economic costs that are economically viable in a competitive market. The ICF proposal outlines that the Commission has authority to prescribe a uniform bill-and-keep compensation rule for all traffic, under which each carrier recovers from its own subscribers the costs

[4] *First Report and Order*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98. 11 F.C.C. Rcd 15499 (1996) ("*Local Competition First Report and Order*").

of transmitting calls to and from them, whether or not the intercarrier exchange of traffic is balanced. The National Association of State Utility Consumer Advocates (NASUCA) states that any proposal should drive rates toward costs.

The majority of the MoPSC supports a forward looking methodology as the appropriate cost standard for a unified rate regime. As stated earlier, the United States Court of Appeals found that a forward looking cost methodology best promotes competition and accomplishes the goals of the 1996 Act. As also previously discussed, the Commission in its TELRIC NPRM stated that a forward-looking cost approach more closely approximates the costs that would exist in a competitive market than historical costs.

The majority of the MoPSC supports a unified rate plan that is technologically and jurisdictionally neutral. Carriers should be free to negotiate compensation arrangements; however, absent a negotiated interconnection agreement, a unified compensation rate should be mandatory.

The Commission asks several questions related to identifying "traffic-sensitive" costs. Traffic-sensitive costs are traditionally related to circuit-switched networks. As new technology develops, elements will not be circuit-based and will need different pricing structures. For this reason, proponents of various proposals suggest the Commission move to flat-rated charges, connections-based charges, or bill-and-keep. The EPG and ARIC proposals continue to support traffic sensitive rates for switching and transport until such time as those rates are replaced by a flat rate structure. However, even proposals such as NARUC's, that promote a unified origination or termination rate, support a structure where the carrier is compensated through a per-minute rate based on the number of access lines per wire center. In short, compensation based on traffic-sensitive rates appears to be a thing of the past for most proposals.

The majority of the MoPSC supports a unified rate for all traffic. The NARUC proposal, which sets forth national uniform termination charges in the absence of negotiated agreements, represents a fair compensation mechanism for all ILECs. NARUC presents a graduated compensation scale whereby all carriers would pay termination rates ranging from $.002 for the largest wire centers to $.01 for the smallest wire centers. The NARUC plan filed in this docket on March 1, 2005, proposes eliminating the origination charge as a means to minimize the opportunity for arbitrage, thus stranding existing circuit-switched investment. Missouri has some exchanges with as many as 100,000 access lines and some with as few as 200 lines. This proposal will allow Missouri carriers to recover revenues based on their size. In other words, although the rate is unified, the small, rural LECs will not be expected to charge the same rate as a large, urban LEC. As discussed in more detail in Section (C) - Rate Averaging and Integration Requirements,[5] Missouri intrastate access rates vary greatly among carriers. A graduated

[5] *See* page 15 of the MoPSC Comments.

rate based on access lines will lessen the impact of shifting the entire burden of cost recovery to end users. The majority of the MoPSC supports this type of rate structure.

Several proposals move toward connections-based or flat-rate compensation mechanisms. This is consistent with a move away from traditional circuit-switched technologies. NARUC proposes that, consistent with the EPG plan, LECs should be permitted to convert per minute termination charges to equivalent capacity charges. In its proposal, which was attached to the FNPRM, NARUC suggests that capacity charges should be mandatory after three years for ports dedicated to a single carrier's terminating traffic and mandatory for all ports after five years. As NARUC states, capacity charges can be more closely associated with the "cost causer" and provide a mechanism to charge for facilities in a packet-switched environment. However, as EPG notes, the Commission may need to initiate an additional proceeding to determine how to apply capacity charges to two-way and common ports. The majority of the MoPSC supports additional review of the transition from per-minute to capacity-based charges.

B. State Jurisdiction and Preemption

At paragraph 78, the Commission states it has authority under Section 201 to adopt or modify compensation mechanisms that apply to jurisdictionally interstate traffic and it clearly has authority to modify pricing methodologies that apply to reciprocal compensation under Section 252(d)(2). However, the Commission seeks input on its authority to implement reform that includes modification of intrastate rates because states have historically had exclusive jurisdiction over access charges for intrastate traffic. The Commission notes that while Section 251(b)(5) applies to all "telecommunications" traffic, Congress carved out access services from the scope of Section 251(b) in Section 251(g). The Commission has interpreted Section 251(g) to include intrastate access services in its *Local Competition First Report and Order.*[6] Based on its interpretation of Section 251(g), and the Commission's authority under Section 251(g) to set rules superseding pre-Act arrangements for access services, the Commission asks for comment on whether it has authority to replace intrastate access charges with an alternative mechanism.[7]

The Commission does not have comprehensive authority over exchange access compensation arrangements that enables it to replace intrastate access charges without state commission participation. Subsequent to the *Local Competition First Report and Order,* the Commission expressed doubts about whether Congress intended to include intrastate access services within the scope of Section 251(g). In its *Remand Order*[8] on intercarrier compensation for ISP-bound traffic, the Commission examined Congress' intent in carving out access charge services from Section 251(b)(5). There, it

[6] *See Local Competition First Report and Order,* 11 F.C.C. Rcd at 15869, para. 732.

[7] FNPRM, para. 79.

[8] *See Order on Remand and Report and Order,* In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 99-68. 16 F.C.C. Rcd 9151 (2001).

noted that Section 251(g) only expressly preserves the Commission's traditional policies and authority over *interstate* access services:

> Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only the Commission's traditional policies and authority over *interstate* access services)…[9]

If intrastate access charges are not included under Section 251(g), then the Commission does not have general authority under that subsection to implement rules replacing intrastate access charge schemes.

The Commission also seeks comment on ICF's argument that the Commission has the authority to address intrastate access reform under Sections 201, 251(b)(5) and 254 of the Act.[10] The Commission does not have exclusive authority to replace intrastate access regulation with an alternative mechanism under these sections either. As the U.S. Supreme Court explained, the Commission has generic "rulemaking authority" in Section 201 to carry out Congress' competition policies under Section 251.[11] State commissions still have the right to participate, but their participation is *guided* by federal agency regulations.[12] Therefore, states retain authority to play a local role consistent with Commission identified goals and guidelines.

---

[9] *Id.* at 9168 n.66 (emphasis in text); *see also id.* ¶ 39: "These [access] services remain subject to Commission jurisdiction under section 201 (or, to the extent they are intrastate services, they remain subject to the jurisdiction of state commissions)…"

[10] FNPRM at para. 82.

[11] *See* AT&T v. Iowa Utils. Bd., 525 U.S. 366, 378 (1999).

[12] *See id.* at n.6.

For example, states still play an important role in the Commission's implementation of Congress' Section 251 interconnection and unbundling requirements. The Commission has set general pricing rules for unbundled network elements, but states review interconnection agreements to ensure that companies apply them properly in setting company-specific rates. Therefore, even under the broad Sections 251-252 scheme, states retain authority to implement policies on the local level.

The Commission also seeks comment on ICF's suggestion that it may preempt state authority over intrastate access traffic on the grounds that state access charges are inconsistent with the Commission's duty under Section 254 to rationalize universal service support.[13] The U.S. Supreme Court has held that the Commission may preempt state authority only in certain specific circumstances. For example, in *La. Pub. Serv. Comm'n v. FCC*,[14] the Commission had preempted state authority to set intrastate depreciation practices, claiming preemption was necessary to avoid frustrating validly adopted federal policies (*i.e.*, promoting competition in inside wiring). The United States Supreme Court reversed, stating that preemption is valid only where Congress, in enacting a federal statute:

> [E]xpresses a clear intent to pre-empt state law, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to

---

[13] FNPRM para. 82.

[14] *See* La. Pub. Serv. Comm'n v. FCC et al., 476 U.S. 355 (1986).

> state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. (citations omitted)[15]

Courts have continued to apply restraints on the Commission's preemption powers since this landmark decision. Courts have held, for example, that a Commission preemption order must satisfy at least three requirements, that: (1) the order serve valid goals under the Commission's jurisdiction; (2) preemption of intrastate telecommunications is necessary to avoid frustrating these goals; and (3) the preemption order be narrowly tailored to take away from the states only those aspects of regulation that cannot be separated into intrastate and interstate components.[16]

Here, the Commission cannot preempt state authority over access charges as inconsistent with its Section 254 duty to "rationalize" universal service support. First, as long as states can regulate in a manner consistent with a federal unified intercarrier compensation scheme, identifying intrastate access traffic and costs, the requirements for preemption are not met.[17]

---

[15] *Id.* at 368-369.

[16] *See, e.g.,* Cal. v. FCC, 75 F.3d 1350 (9th Cir. 1996), *cert denied*, 517 U.S. 1216 (1996) (upholding FCC Order limiting state restrictions on per-line, as opposed to per-call, blocking of Caller I.D. as, among other things, fitting within the "impossibility" exception, where it was not possible to separate components of state and federal regulation); *Cal. v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (rejecting FCC Order releasing BOCs from requirement that they must offer enhanced services through a separate subsidiary and preempting states from regulating enhanced services because, among other things, state regulation of enhanced services would not make federal regulation impossible).

[17] *See* Louisiana. Pub. Serv. Comm'n, 476 U.S. at 376 n.4.

Additionally, preemption is not appropriate to "rationalize" universal service support, Section 254 expressly permits states to maintain their own universal service support systems as long as they are consistent with federal rules. Reinforcing state authority, the 10th Circuit Court of Appeals has already held that states have concurrent authority over universal service support systems, and that states will *not* violate Section 254 if they continue to provide support through implicit mechanisms such as intrastate access charges. As the Court explained:

> As we explained in *Qwest* I*,* the Act 'plainly contemplates a partnership between the federal and state governments to support universal service.' The terms of the Act evidence recognition of concurrent state authority….In keeping with the dual regulatory scheme embraced by the Act, Congress intended that states retain significant oversight and authority and did not dictate an arbitrary time line for transition from one system of support to another….Nor did Congress expressly foreclose the possibility of the continued existence of state implicit support mechanisms that function effectively to preserve and advance universal service. (citations omitted)[18]

The 10th Circuit Court affirmed that states may continue to use mechanisms such as access charges to provide implicit universal service support, without violating Section 254. Therefore, the Commission does not have blanket authority to preempt state intrastate access charge systems to "rationalize" universal service support.

In sum, while the majority of the MoPSC supports a unified rate structure, its legal analysis demonstrates that the Commission does not have

---

[18] *See* Qwest Communications International, Inc. v. FCC*,* 398 F.3d 1222, 1232 (10th Cir. 2005).

the authority to preempt state commission jurisdiction over intrastate access traffic to accomplish this policy goal. Therefore, the majority of the MoPSC recommends the Commission implement a unified rate structure for interstate traffic with a corresponding unified rate for intrastate traffic to be implemented at the state's discretion. In that way, the Commission will provide the framework for the unified rate structure, but states should retain authority to implement the unified rate structure for intrastate rates in the most efficient manner possible to reduce rate shock on end users. For example, states may need to implement a longer transition period or slightly different statewide "unified" rates.

C. Rate Averaging and Integration Requirements

In Section 254(g), Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies. The Commission implemented Section 254(g) by adopting two requirements, that providers of interexchange telecommunications services must (1) charge rates in rural and high-cost areas that are no higher than the rates they charge in urban and low-cost areas (geographic rate averaging rule) and (2) charge rates in each state that are no higher than those in any other state (rate integration rule). Under the Commission's rate averaging and rate integration requirements, interexchange carriers (IXCs) bear the burden of averaging on a nationwide basis, the different per-minute switched access rates charged by local exchange carriers (LECs). This results in an implicit subsidy flowing from customers in low-cost areas to customers in high-cost areas. The Commission notes that absent further reform of the access charge regime, rate averaging and rate integration requirements may eventually place IXCs that serve rural areas at a competitive disadvantage and will have the effect of discouraging IXCs from serving rural areas.

In Missouri, tariffed averaged (intraLATA and interLATA) intrastate switched access rates range from $.0473 to $.2663.[19] In order to compensate for disparities created by the geographic rate averaging rule and the rate integration rule, some IXCs have instituted a line item in-state access recovery fee. These carriers recover over $2 per month as a separate line item on customer bills to off-set Missouri intrastate access rates.

At paragraph 86, the Commission asks parties to comment on the relationship between rate averaging and rate integration requirements and the access charge reform proposals described above. The Commission seeks input on whether the proposals would ease concerns about the disparate impact of rate averaging and rate integration requirements on nationwide IXCs. Proponents of bill-and-keep, a unified rate or connections/capacity charges maintain their proposals would make geographic rate averaging or integration rules unnecessary. Under these proposals, all traffic, regardless of jurisdiction, would be subject to the same rate structure, removing any

[19] Missouri intrastate switched access rates represent the sum of a company's intrastate originating and terminating carrier common line charge, local switching and local transport rates.

disparities that currently exist. NASUCA points out that the Commission should not take action that would short-circuit the access market evolution by guaranteeing each carrier's current level of access revenues into the indefinite future.

While it supports a unified rate scheme, such as NARUC's proposal, the majority of the MoPSC suggests that the Commission may need to implement the new scheme over a transition period to avoid rate shock associated with unifying rates where large interstate/intrastate access disparities exist. For instance, in Case No. TO-98-329, the Missouri Commission has conducted several proceedings and workshops to analyze issues surrounding the implementation of a Missouri Universal Service Fund (MoUSF). In order to bring Missouri intrastate access rates to a level closer to interstate rates, over $308 million in revenues would have to be replaced through end-user rate increases or subsidies from a MoUSF assuming it is determined that revenue neutrality should be guaranteed. For one Missouri small, rural company, this could result in an increase of over $40 to monthly basic local rates. Again, the MoPSC asserts that the impact or shock to the rate payer should be minimized.

To avoid such rate shock, the majority of the MoPSC suggests the Commission may also want to establish an originating rate for 1-plus toll access. Instead of an originating rate of zero, all ILECs could be required to adopt an originating rate of $.002. Payments would be made by the retail service provider (the carrier receiving the payment from the end user) regardless of the technology. For uses of the network other than for 1-plus dialing, ILECs would be required to adopt an origination rate of zero. Where at least 50 percent of a carrier's service area (measured by customer locations) is subject to broadband competition, the carrier would reduce its originating rate to zero.

III. Network Interconnection Issues

Under Section 251(c)(2)(B), an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA. Commission rules preclude a LEC from charging carriers for traffic that originates on the LEC's own network. In response to the previous intercarrier compensation NPRM, most competitive LECs and CMRS providers urged the Commission to maintain the single POI per LATA rule arguing that the current rule prevents ILECs from imposing costly and burdensome interconnection requirements.[20]

Beginning at paragraph 92 of the NPRM, the Commission seeks comment on changes to its network interconnection rules that should accompany proposed changes to the intercarrier compensation regimes. The CBICC plan supports current rules such that CLECs may designate a single

[20] *Further Notice of Proposed Rulemaking*, In the Matter of Developing a Unified Intercarrier Compensation Regime. CC Docket No. 01-92, paras. 87 – 89.

POI per LATA and rural carriers will not bear transport obligations beyond boundaries. The Home plan suggests a tariffed payment for interconnection based on capacity. EPG suggests each carrier must make available at least one POI per LATA and suggests any carrier seeking to terminate traffic must bring traffic to the local carrier. The Cellular Telecommunications Industry Association (CTIA) and Western Wireless advocate that CMRS providers continue to have the right to interconnect at a single POI or on a "geographically equivalent basis" maintaining that CMRS providers should be allowed "local" interconnection regardless of how the traffic is actually routed through hierarchical ILECs offering transit service. The ICF, NARUC and NASUCA support the "edge" concept. The majority of the MoPSC also supports the ICF "edge" concept since it identifies consistent points of network interconnection for the delivery of terminating traffic to similarly situated local exchange carriers. As NARUC notes, the ICF is the only complete proposal included in the FNPRM that addresses network interconnection, transport and transit issues.

The ICF network interconnection proposal provides a framework for voluntary carrier negotiations and establishes default responsibilities in the absence of any carrier agreement to the contrary. The ICF plan classifies carrier networks into three categories – hierarchical, non-hierarchical, and rural – and specifies rules for interconnection to each network. These rules are based on the concept of network "edges", or specified points at which these networks interconnect for the delivery of terminating traffic. Network edges must be able to accept all types of public switched telephone network traffic, and are subject to numerical, functional, and locational requirements specified in the plan. The ICF proposes a terminating transport rate of $.0095 per minute for covered rural telephone companies (CRTCs) for situations where the distance is less than 200 miles if islands and roadless areas are not involved. NARUC expands this proposal recommending that, where the distance is 200 miles or greater or involves islands or roadless areas, the weighted average may not exceed $.019. These provisions should provide assistance in circumstances where the terminating transport distance is significant.

The majority of the MoPSC suggests the ICF approach to network interconnection is consistent with the goal of a unified regime. Setting specified points of interconnection allows intercarrier compensation to be unified. Consistent with this approach, rates should be the same for all traffic in both interstate and intrastate jurisdictions and for all technologies, creating a fully "unified" scheme. Further, as the EPG discusses, if all carriers pay for the services they use, the rule will be competitively and technologically neutral.

At paragraph 95, the Commission seeks comment as to whether it should consider alternative methods of determining financial responsibility for network interconnection costs if it does not adopt the ICF, or a bill-and-keep proposal. A bill-and-keep compensation mechanism assumes all traffic flows relatively equally between all carriers. However, traffic does not flow equally. Any compensation regime should be competitively neutral and ensure that requesting carriers have an economic incentive to continue to provide quality service. The compensation regime should also minimize arbitrage opportunities.

Further, if the POI is outside the LEC's exchanges, a rural carrier will not want to provide transport at a zero rate. The competitive carrier will need to arrange for transport to a POI within the carrier's serving area. With a zero rate, competitive carriers will not have an incentive to establish more transport routes.

Carriers will not have incentives to replace existing copper wires and switching facilities with next generation equipment if costs cannot be recovered or if the traffic flow imposes costs on the carrier that it cannot recover. To create an incentive to invest in advanced technology, the carrier providing the facilities must also be able to recover its costs from those customers creating the costs. Since the NARUC rate structure is competitively and technologically neutral and incorporates the "edge" concept for termination of traffic, it minimizes arbitrage opportunities most effectively.

To achieve the goals of a unified rate structure described in these comments, the Commission must change its existing network interconnection and compensation rules. As the Commission noted in the FNPRM, if it adopts a unified rate that applies to all types of traffic but retains interconnection rules that vary by type of traffic, carriers still may have an incentive to classify traffic in a manner that reduces their interconnection costs. Therefore, the Commission needs to make rule changes consistently throughout its regulatory scheme to eliminate any incentives for carriers to deliberately misidentify traffic.

IV. Cost recovery

A. Legal Obligation for Cost Recovery

Beginning at paragraph 99 of the FNPRM, the Commission seeks comment on issues related to LECs' cost recovery if they no longer receive interstate switched access revenues. Specifically, the Commission seeks comment on its legal obligation to provide alternative cost recovery mechanisms, including whether LECs' rates will be confiscatorily low if the Commission does not substitute an alternative mechanism for interstate switched access charges. The proposals vary greatly on this issue. Responses range from suggestions that carriers should fend for themselves to proposals for many new rate components to ensure revenue neutrality. Some proposals recommend plans to transition toward unified rates. Others recommend almost an immediate flash cut to unified rates. Revenue losses are off-set through such mechanisms as increases in subscriber line charges, increases in USF contributions, the creation of new USF programs, or increases to end-user rates. Before analyzing the merits of the individual proposals, the Commission should first address whether a carrier is entitled to or should be guaranteed revenue neutrality.

The Commission's unified intercarrier compensation scheme will replace different methods by which carriers have compensated LECs for access to the network, including reciprocal compensation and access charges. Generally, Section 252(d)(2)(A) requires that a just and reasonable reciprocal compensation agreement provide for recovery of transport and termination "*costs*". Thus, to the extent that a new intercarrier compensation regime decreases ILEC revenues, but nonetheless allows ILECs to continue to recover their costs of transport and termination, the regime should be legally valid as a compensation mechanism under this section. However, Section 252(d)(2)(B)(ii) prevents both the Commission and state commissions from engaging in rate regulation proceedings to determine "with particularity" the additional costs of transport and termination.

Section 251(g), Congress' provision that carves out access charges from Section 251(b) requirements, does not guarantee revenue neutrality for ILECs, either. Congress appeared to ensure that ILEC access charge compensation would continue at comparable levels after the Act. However, this hiatus ends when the pre-Act access service restrictions and obligations are superseded through reform or revisions to the scheme.

As a general matter, eliminating switched access charges will not necessarily cause ILEC rates to be confiscatorily low, if the Commission does not adopt alternative mechanisms that guarantee the same level of revenue recovery. Supporting such a *general* takings claim under the Constitution is difficult under courts' decisions interpreting standards that companies must meet to prove unlawful confiscation. For example, in *Tex. Office of Pub. Util. Counsel v. Fed. Communications Comm'n*,[21] the Fifth Circuit Court of Appeals reviewed GTE's claim that the Commission's adoption of a forward-looking cost methodology for defining universal service costs would force ILECs to operate at a loss that was so significant that it constituted an unconstitutional taking. The Court rejected GTE's claim, finding that GTE had not shown that an actual taking had occurred or that any taking would be permanent or so serious as to be considered "confiscatory."[22] Similarly, here, to demonstrate that the change in regimes caused unlawful confiscation, an ILEC would have to show that an actual taking had occurred, even though its rates recovered its "costs" as the Act required.

ILECs in some circumstances may have more valid claims for regaining lost revenues. If, for example, Eligible Telecommunications Carriers can show that implicit subsidies in access charges aided in keeping rates reasonably comparable and affordable, more revenue might be needed

---

[21] Tex. Office of Pub. Util. Counsel v. Fed. Communications Comm'n, 183 F.3d 393, 413 n.14 (5th Cir. 1999).

[22] *Id.* The Court cited to Dusquesne Light Co. v. Barasch, 488 U.S. 299, 314, 109 S.Ct. 609 (1989), holding that an otherwise reasonable rate is not subject to constitutional attack by questioning the theoretical consistency of the method that produced it.

to ensure that universal service support was sufficient under Section 254(e). Also, if an ILEC still regulated on the state level as a rate-of-return carrier can show that it will not have the opportunity to earn a fair return based on its intrastate costs, it may be entitled to rate adjustments or rebalancing. It is unclear how other issues, such as jurisdictional separations of costs and intrastate access charges, will be impacted by changes in the entire intercarrier compensation scheme. However, Sections 251 and 252 do not provide blanket guarantees of revenue neutrality for changes that the Commission makes to adopt a unified intercarrier compensation scheme consistent with the Act.

A unified compensation regime should encourage carriers to negotiate intercarrier compensation arrangements and states should retain the authority to review and approve those agreements in accordance with the standards set forth in Section 252 of the Act. The Commission should establish default compensation criteria that apply if carriers do not have negotiated or arbitrated agreements. Although, as NARUC agrees, the Commission does not have the authority to preempt states on intrastate rates, the Commission can provide guidance for states to follow in setting default rates similar to federal guidelines for unbundled network element rates. The Commission should permit competitive carriers, including but not limited to CLECs, CMRS providers and cable telephony providers to adopt a unified termination rate that is no greater than the termination rate of the

ILEC serving that same area.

If a negotiated agreement is not reached, the proposal that an ILEC should be allowed to petition the state commission for an arbitration proceeding to address any additional costs of terminating calls not covered by the unified rate mechanism may be a reasonable proposal, but it should be further explored. If such proposal is determined to be reasonable, the Commission should establish guidelines for such arbitrations and review state compliance with these guidelines upon reasonable request. To avoid undue administrative burdens, if such arbitrations are determined to be reasonable, state commissions should be allowed to consolidate rural telecommunications company arbitrations to develop unified rates that would apply to all rural companies involved. If such a proposal is determined to be reasonable, the Commission should establish a process for state commission's to determine whether a company's earnings are reasonable and authorize the appropriate rate of return for the carrier(s).

B. Method of Cost Recovery

Beginning at paragraph 101, the Commission asks for comment on whether it should rely solely on end-user charges, or also include universal service support mechanisms (new or existing) to substitute for revenues no longer recovered through interstate access charges. Once again, the proposals vary greatly on the method of cost recovery. While some proposals rely strictly on a unified rate, others include capacity or numbers-based charges, and others contain new subsidies through a USF-like mechanism. Some of the plans imply that they will not impact the end user or the USF, but actually create a fund that largely mirrors contributions received via the existing USF. Some plans suggest that the Commission should resort to higher end-user recovery rates only after all other attempts at cost recovery fail. Ultimately, any new subsidy or additional contribution to a fund results in increases to the end-user, however.

Once again, the majority of the MoPSC supports NARUC's proposal as it incorporates components of several of the plans to achieve a uniform mechanism that is economically viable. The MoPSC recommends that the Commission refer any decisions to the Universal Service Joint Board and the Separations Joint Board for review.

1. Subscriber Line Charges

Under the NARUC proposal, filed as an *ex parte* on March 1, 2005, non-rural LECs could increase the federal subscriber line charge up to $3 or the amount of intercarrier compensation losses, whichever is lower. The majority of the MoPSC suggests an initial $3 increase may not be appropriate. To reduce rate shock to consumers, it may be more appropriate to use the methodology similar to that proposed by the ICF, where the Commission establishes a transitional framework for a SLC increase over a period of years. Any SLC increase must be approved by the Commission. Support to high cost rural areas should not be based on whether the area is served by a "rural" or "non-rural" carrier, but rather on the cost characteristics of the area being served. It is unreasonable to expect non-rural carriers to subsidize their high cost, rural exchanges in an increasingly competitive environment. Once again, the majority of the MoPSC suggests that it may be reasonable for the Commission to allow states flexibility to address the impact of lost revenues from reduced intrastate access rates and suggests the Commission give such a proposal further consideration.

2. Universal Service Fund

In its *Report and Order and Second Further Notice of Proposed Rulemaking* in CC Docket No. 96-45, the Commission stated:

> Although the actions taken today will improve the operation of our revenue-based [contribution] methodology in the near term, we remain concerned that any contribution system based on interstate telecommunications revenues will be dependent on the ability of contributors to distinguish between interstate and intrastate telecommunications and non-telecommunications revenues…We, therefore, seek additional comment on three specific connection-based proposals.[23]

In its comments on that FNPRM, the MoPSC recommended that the Commission make any changes to the current contributions methodology in a manner that is non-discriminatory, competitively neutral, and easily administrable. Parties generally recognize that the Commission should modify the basis for universal service contributions. Connections, bandwidth and numbers-based contributions have been suggested in various proposals. As part

[23] *Report and Order and Second Further Notice of Proposed Rulemaking*, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 et al., para. 69. Released December 13, 2002.

of any USF modifications related to a revised intercarrier compensation scheme, the Commission should take into account the comments and its decisions adopted in response to the FNPRM in CC Docket 96-45.

The NARUC plan proposes a "Rural Access Charge Transition Fund" to offset a reduction in tariffed access charges for rural eligible telecommunications carriers (ETCs). The fund guarantees revenue neutrality for rural ETCs for a minimum of three years as long as the company's earnings are not unreasonable. State commissions would have the authority to establish revenue neutrality after the three-year period. This is another example of the need for an additional proceeding to determine the size of the Fund and the ultimate impact on the end-user and to establish a process for determining if LEC rates are unreasonable.

The NARUC proposal also anticipates that within three years, the Commission would establish a mechanism for determining the amount of universal service funds to be distributed to states. Under this proposal, state commissions would determine the distribution of funds within the state. The amount provided to each state would be no less than the funds distributed to recipients in the state in 2004 and would be sufficient to ensure all states have adequate funding to meet the standards prescribed in Section 254(b)(3) of the Act. The MoPSC supports establishing a joint process to ensure accountability for receipt of funds. By distributing support to state commissions, the Commission further empowers states to ensure funds are being used to provide quality services at reasonable rates throughout all rural exchanges.

3. National Benchmark

The majority of the MoPSC supports establishing a national benchmark for local exchange network cost recovery. The EPG suggests a benchmark based on an average local rate plus the SLC not to exceed $21.07. ARIC proposes to rebalance basic rates based on a floor and ceiling determined by a Federal-State Joint Board over a 5 year transition period. NARUC proposes a national benchmark for local exchange network cost recovery, including any SLCs and other mandatory charges, to be used when determining the need for universal service support after an initial three year period. NASUCA suggests by establishing target rates, the Commission will provide guidance to the states, but argues that states should be allowed to achieve the target rates according to their own policies. NARUC and NASUCA both caution against rate increases to Lifeline consumers.

The majority of the MoPSC supports the establishing a benchmark rate and a floor for basic local rates. The majority of the MoPSC suggests the EPG provides reasonable justification for establishing a benchmark in any framework, although it specifically proposes an Access Restructuring Charge. For instance, the EPG says:

> To qualify for full [cost recovery] funding, the sum of the company's basic residential rate and its residential and single line business SLC must be greater than or equal to a "benchmark" level of $21.07.

The EPG further states:

> In order to qualify for full [cost recovery] funding, the sum of the carrier's basic residential rate and its residential and single line business SLC would need to be at or above a "benchmark" level of $21.07. If a carrier's combined rates were below this level, the carrier's draw [for cost recovery] would be reduced by the amount that such rates were below the benchmark, multiplied by the number of lines.

Finally, the EPG states:

> In creating [cost recovery] we recognize that some states have progressed more quickly than others in lowering intrastate access rates, and increasing cost recovery from end user rates and from state universal service funds. If the [fund] were to be implemented without some consideration of the degree to which states have rebalanced rates, then there could be an issue of equity among the states. States that had progressed further with rate rebalancing would be penalized, and states that had not would be unjustly rewarded unless some mechanism is implemented to account for this. To address this issue, the EPG Plan proposes that a "benchmark" price level be established for computation of [cost recovery]. Specifically, the EPG Plan proposes a benchmark of $21.07 per line be established for the sum of basic rate (including non-optional EAS charges) and the federal SLC. Companies where the sum of the basic and SLC was less than $21.07 would face a reduction of ARC funding that they might otherwise qualify for as a result of the revenue loss created by the establishment of unified intercarrier compensation rates.[24]

Without supporting $21.07, the majority of the MoPSC agrees that a benchmark should address concerns with the distribution of universal service funds and concerns with artificially low basic local rates charged by some

---

[24] EPG's *Comprehensive Plan For Intercarrier Compensation Reform*, Nov. 2, 2004, (EPG Proposal), attached to Letter from Glenn H. Brown, EPG Facilitator, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004).

carriers. Once again, the majority of the MoPSC suggests the Commission select the plan for unified compensation and then initiate a further proceeding to seek input on such things as determining the appropriate benchmark.

4. Flat-rated Charges

Several plans promote moving to flat-rated, capacity-based charges. EPG proposes that the Commission transition from usage sensitive rates to flat rates. It appears to recognize that time sensitive minutes of use will not apply to next-generation equipment. In its March 1, 2005 ex parte, NARUC advocates that LECs be permitted to convert per minute termination charges to equivalent capacity charges at any time, with a goal of converting all per minute termination charges to port charges within five years. NARUC suggests the Commission initiate a proceeding to investigate how to convert per minute termination charges to capacity charges on a revenue neutral basis.

The majority of the MoPSC supports the concept of converting per minute charges to capacity charges to follow cost causation more closely as technology moves toward packet switching. However, many issues still need to be addressed before converting to compensation based on capacity charges. Consistent with its unified compensation goals, the Commission should guard against creating opportunities for arbitrage in transitioning from minutes-of-use to capacity-based charges. Further, the Commission should explore how capacity-based charges will apply to two-way and common ports. Therefore, the majority of the MoPSC recommends the Commission initiate proceedings to fully explore issues related to a move to capacity-based charges.

V. Transit and Transport Issues

Beginning at paragraph 120, the Commission states that although many ILECs provide transit service pursuant to interconnection agreements, the Commission has not formally determined whether carriers have a duty to provide transit service. In its previous NPRM, the Commission sought comment on the transport obligations of interconnecting LECs and, specifically, whether it should allow LECs to charge each other for delivering transit traffic that originates on the networks of other carriers.[25] In this FNPRM, the Commission seeks further input on the LECs' obligation to provide transit services under the Act. In particular, the Commission seeks comment on whether statutory language regarding the duty to interconnect directly or indirectly under Section 251(a) includes an obligation to provide transit service, and if so what rules related to rates, terms and conditions are warranted. The Commission also seeks comment on whether carriers create sufficiently detailed billing records under the current rules and industry standards to permit originating and terminating carriers to determine the appropriate

[25] *Intercarrier Compensation NPRM*, 16 F.C.C. Rcd at 9634, para. 71.

compensation due.

The MoPSC recently completed an enhanced records exchange rule after it conducted several years of proceedings and workshops addressing issues related to the exchanging of records between carriers and identifying traffic for proper compensation. The ICF offers the only comprehensive plan to address transport and transit traffic issues. The MoPSC finds the ICF proposal consistent with its recently approved rule and supports the ICF proposal for transiting and transporting traffic.

A. Commission Authority

The ICF proposal provides a basis for the Commission to classify tandem transit service as an Interstate Common Carrier Offering. The ICF plan notes the Commission's authority to prescribe transit rates is derived from Sections 201 and 251(a) of the Act. Section 201 gives the Commission authority to require that LECs provide transit for traffic between interexchange carriers, independent LECs, CMRS carriers and other providers. Section 251(a) requires all telecommunications carriers to interconnect directly or indirectly with all telecommunications carrier networks and authorizes the Commission to regulate all transit traffic, including intrastate traffic. According to the ICF, regulation of transiting traffic pursuant to Section 251(a) is perfectly consistent with the Commission's previous rulings that 251(a) authorizes the Commission to regulate the physical linking of two networks. While two carriers connecting with a third carrier may establish the potential for interconnection, Section 251(a) requires actual interconnection. That actual interconnection is accomplished only where the middle link – transit – is offered by a third carrier.

The ICF plan requests that the Commission find that tandem transit service is an interstate common carrier service and that the requirements of Section 214 and Part 63 of the Commission's rules govern that traffic. An ILEC or a non-incumbent carrier may compete for tandem transit service business. The ICF notes that all ILECs providing transit service on July 1, 2005 will continue to do so under its proposal. If the Commission asserts authority over transiting traffic, it should not preempt state authority over intrastate transit service and should not preclude states from establishing rules addressing the transit, transport and exchange of records for that traffic as long as those rules do not conflict with the Commission's final decision governing intercarrier compensation for that traffic.

B. Cost Recovery for Transport and Transit Traffic

The ICF plan ensures rural carriers do not bear costs of transporting traffic outside their study areas for originating calls. The ICF proposes a terminating transport rate of $.0095 per minute for covered rural telephone companies (CRTCs) for situations where the distance is less than 200 miles and islands and roadless areas are not involved. NARUC expands this proposal and states, where the distance is 200 miles or greater or involves islands or roadless areas, the weighted average may not exceed $.019. The majority of the MoPSC supports these provisions as a default rate in circumstances where the terminating transport distance is significant. As previously stated, the NARUC proposal that CRTCs should be able to petition state commissions for arbitration proceedings pursuant to Section 252 of the Act in order to establish a higher rate than the default rate to cover the additional costs of terminating such calls may be a reasonable proposal, but it should be further explored. If such a proposal is determined to be reasonable, the Commission should establish guidelines for such arbitrations and review state commission decisions upon reasonable request.

C. Billing Issues and Unidentified or Phantom Traffic

Under the ICF proposal, carriers would create standard billing records for terminating carriers to identify the billable party. The tandem transit provider would pass originating carrier identification parameters and calling party number (CPN) data to the terminating carrier. According to the EPG, such traffic must be identified and if not, the carrier should not terminate the traffic, but should rather transfer it to an identification-station. Carriers should not have to terminate unidentified traffic of any kind. Similarly, ARIC states that such traffic must be identified and if not, the tandem owner should be responsible for payment. NARUC suggests that transiting carriers should not be the guarantor of compensation for terminating LECs. NARUC further states that ILECs should not be required to terminate calls if the call records do not permit billing for terminating access as long as they participate in developing an industry process to identify calls. NARUC's position is consistent with the ICF which recognizes that issues related to the provision of call detail information/call records requires further definition and resolution in certain instances. In its filing, the ICF commits to working toward a mutually agreeable solution. As noted above, the MoPSC just completed a lengthy rulemaking process addressing such concerns. The Commission should not preempt state rules addressing the transit, transport and exchange of records for that traffic as long as those rules do not conflict with the Commission's ultimate decision for intercarrier compensation for that traffic.

D. IntraMTA Traffic

Finally, the Commission seeks comment on issues related to its intraMTA rule and the appropriate compensation for intraMTA traffic. As stated above, the majority of the MoPSC supports a unified intercarrier compensation scheme that is applicable to all traffic, for all jurisdictions and for all technologies. Under such a scheme, there would no longer be a need to maintain a distinction between interMTA and intraMTA CMRS traffic. The CBICC notes, a unified rate would eliminate an intraMTA rule. Similarly, ICF notes that under the concept of a unified regime, the compensation between companies would be the same for all wireless traffic and the distinction between interMTA or intraMTA would be immaterial.

VI. Summary

The majority of the MoPSC generally supports the NARUC unified forward-looking compensation proposal. The majority of the MoPSC suggests it may be reasonable to establish a regime where state commissions retain authority to review the unique cost recovery issues associated with intrastate access revenue loss and suggests the Commission explore this concept further. Finally, the majority of the MoPSC suggests the Commission issue its decision on the appropriate intercarrier compensation plan along with a Further Notice of Proposed Rulemaking seeking additional comment on the carrier-specific or state-specific impacts of the plan. This will allow the opportunity to further refine that plan and resolve any outstanding issues before implementation.

Respectfully submitted,

Natelle Dietrich
Regulatory Economist

William K. Haas
Deputy General Counsel

Attorney for the
Missouri Public Service Commission

P. O. Box 360
Jefferson City, MO 65102

(573) 751-7510 (Telephone)
(573) 751-9285 (Fax)